

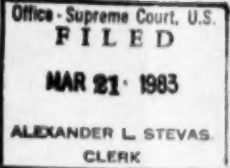
IN THE
SUPREME COURT OF THE UNITED STATES

NO. 82-6206

JOHNNY TAYLOR,
PETITIONER

VS

LOUISIANA



ON PETITION FOR WRIT OF CERTIORARI TO THE LOUISIANA SUPREME COURT

BRIEF OF THE STATE OF LOUISIANA IN OPPOSITION

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OPINIONS BELOW

The opinion of the Louisiana Supreme Court is reported at 422 So.2d 109 (La. 1982). On November 19, 1982, rehearing was denied by that court. After an extension of time, a petition for a writ of certiorari was filed in this Honorable Court.

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition.

COUNTERSTATEMENT OF
QUESTIONS PRESENTED

Whether there is any constitutional right to any procedure to challenge an extradition.

Whether a Brady violation occurs when certain parts and or pieces of physical evidence are destroyed, lost or thrown away by the State.

Whether the death penalty imposition constitutes cruel, excessive or unusual punishment when said penalty is based at least in part on alleged circumstantial evidence.

STATEMENT OF THE FACTS

The facts of the case are stated fully in the Louisiana Supreme Court decision as reported at 422 So.2d 109, 111-113.

ARGUMENT

WHETHER THERE IS ANY CONSTITUTIONAL RIGHT TO ANY PROCEDURE TO CHALLENGE AN EXTRADITION.

In this ground for relief, the petitioner alleges a violation of his constitutional rights in connection with his transfer to Louisiana from Alabama. Specifically he complains of the lack of a hearing or counsel.

As was found by the Louisiana Supreme Court at page 113:

Taylor was arrested on an unrelated auto theft charge and incarcerated in Butler, Alabama. On June 17, 1980 an arrest warrant was issued in Jefferson Parish for second degree murder, armed robbery and theft. He was indicted for first degree murder on August 28, 1980; on October 23, 1980 a copy of the indictment, minute entry, arrest warrant and commitment for Taylor were sent to the Alabama authorities. On November 7, 1980 a formal request was made to the Governor of Alabama to extradite defendant to Louisiana to stand trial for murder. Taylor was surrendered on November 26, 1980.

In Frisbie v. Collins, 342 U.S. 519, 72 S.Ct. 509, 96 L.Ed. 541 (1952), it was stated:

Due process of law is satisfied when one present in court is convicted of crime after having been fairly apprised of the charges against him and after a fair trial in accordance with constitutional procedural safeguards. There is nothing in the Constitution that requires a court to permit a guilty person rightfully convicted to escape justice because he was brought to trial against his will. Frisbie v. Collins, supra, 342 U.S. at 522, 72 S.Ct. at 512.

Thus, an illegal arrest or detention does not void a subsequent conviction.

As no constitutional violation can be shown, the ground for relief must fail.

WHETHER A BRADY VIOLATION OCCURS WHEN CERTAIN PARTS AND/OR PIECES OF PHYSICAL EVIDENCE ARE DESTROYED, LOST OR THROWN AWAY BY THE STATE.

In this ground for relief, the petitioner alleges that his trial was unfair because the State destroyed or threw away several alleged fingerprints and/or palmprints. Specifically, the petitioner alleges that he was denied a

fair trial because the State destroyed or lost evidence favorable to him in contravention of Brady v. Maryland, 373 U.S. 83, 83 S.Ct 1194, 10 L.Ed.2d 215 (1963).

As was succinctly found by the Louisiana Supreme Court and stated at page 114 of its opinion

No Brady violation has been shown by defendant. All pertinent prints were turned over to the defense, including those that did not match defendant's prints. The fingerprint technician merely threw away prints which were of no value, either as exculpatory or inculpatory evidence, because they contained insufficient points for identification purposes. Standard procedure was followed. Although Deidrich stated that he secured the prints in his locker to be picked up by the evidence custodian, Don Carson, Rolfe testified that he received the prints from Deidrich according to routine practices.

Thus, petitioner speculates that exculpatory material was lost but failed to use or develop what evidence he did secure.

Thus, there is no basis for relief in this ground.

WHETHER THE DEATH PENALTY IMPOSITION CONSTITUTES CRUEL EXCESSIVE OR UNUSUAL PUNISHMENT WHEN SAID PENALTY IS BASED AT LEAST IN PART ON ALLEGED CIRCUMSTANTIAL EVIDENCE.

In this ground for relief, petitioner alleges that the imposition of the death penalty in his case constitutes cruel, excessive and unusual punishment because his case involved circumstantial evidence. Specifically, the petitioner also prays for an extension of this Court's decision in Ermund v. Florida, ___ U.S. ___, 102 S.Ct. 3368, 73 L.Ed.2d 1140 (1982), to include cases involving circumstantial evidence.

In the Ermund case, this Court granted certiorari to determine whether death is a valid penalty under the Eighth and Fourteenth Amendments "for one who neither took life, attempted to take, nor intended to take life." Consequently, this Court held that the Eighth Amendment does not permit the imposition of the death penalty on a defendant who aids and abets a felony in the course of which a murder is committed by others but who does not himself kill, attempt to kill or intend that a killing take place or that a lethal force will be employed. That case further emphasized the need to examine the individual culpability of a defendant in conjunction with a sentence of death.

The State respectfully submits that the conviction and sentence in this case was based on direct and circumstantial evidence. Furthermore, the

complete and exhaustive review done by the Louisiana Supreme Court clearly supports the conclusion that the imposition of the death penalty in this case is not cruel, excessive or unusual punishment. Rather, it is a conviction supported by the record in this case and a sentence free from passion and arbitrary factors. This sentence links the culpability of the defendant and the will of the Louisiana Legislature expressed as the law of the State. Clearly within the framework of the United States Constitution, this conviction and sentence must stand.

Thus, there can be no relief on this ground.

CONCLUSION

FOR THE FOREGOING REASONS, IT IS RESPECTFULLY SUBMITTED THAT THIS PETITION FOR WRIT OF CERTIORARI SHOULD BE DENIED.

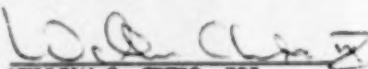
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Respectfully Submitted,

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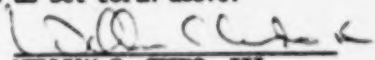

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CERTIFICATE

I, William C. Credo, III, a member of the Bar of the Supreme Court of the United States, hereby certify that, on the 17th day March, 1983, I served three copies of the brief in opposition on each of the parties thereto, as follows:

1. On petitioner, Johnny Taylor, through his counsel of record, James O. Manning, Esq., 3108 David Drive, Metairie, Louisiana 70003, and, Maurice S. Belly, Esq., 25 Washington Street, P. O. Box 163, Montgomery, Alabama, 36010.

IT IS FURTHER certified that all parties required to be served have been served, and that the list of such parties is as set forth above.


WILLIAM C. CREDO, III
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